

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Applicant(s): Jalkanen et al.  
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PRODUCT FOR INTERACTING WITH A SIGNALING TAG

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**APPEAL BRIEF UNDER 37 CFR § 41.37**

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed July 7, 2006.

1. ***Real Party in Interest.***

The real party in interest in this appeal is Nokia Corporation, the assignee of the above-referenced patent application.

2. ***Related Appeals and Interferences.***

There are no related appeals and/or interferences involving this application or its subject matter.

3. ***Status of Claims.***

Claims 1-41 are pending, of which Claims 3, 5-10, 13, 17, 19-24, 27, 28, 31, 33-38 and 41 are allowable. The remaining claims, namely Claims 1, 2, 4, 11, 12, 14-16, 18, 25, 26, 29, 30, 32, 39 and 40, stand rejected and are the subject of the present appeal.

4. ***Status of Amendments.***

There are no unentered amendments in this application.

5. ***Summary of Claimed Subject Matter.***

The present patent application is directed to a terminal, method and computer program product for interacting with a signaling tag, such as a Radio Frequency Identification (RFID) transponder tag, from which the terminal may read data and/or to which the terminal may write data. Pat Appl., page 2, lines 14-22. As disclosed and recited by independent Claims 1, 15 and 29, the terminal receives information regarding a signaling tag at least partially over an air interface. *Id.* at page 8, line 29 – page 9, line 30; and page 12, lines 6-19. This information may include, for example, a tag type such as “Read Only,” “Read/Write” or “Transceiver in Show Mode.” *Id.* at page 10, line 27 – page 11, line 16. Before receiving the information, however, the terminal may select the signaling tag (e.g., RFID tag), such as by sending an interrogation signal to the tag and receiving a tag type from the tag in response thereto (see Claims 11, 12, 25, 26, 39, 40). *Id.* at page 3, line 20 – page 4, line 3; and page 11, line 19 – page 12, line 5.

Independent Claims 1, 15 and 29 also recite that the terminal performs a predefined action based upon at least a state of the terminal, such as whether the terminal is actively operating an application. *Id.* at page 3, lines 12-14; page 10, lines 24-26; and page 12, lines 20-22. The terminal, method and computer program product of independent Claims 1, 15 and 29 also make a determination as to whether the terminal is actively operating an application, and if the terminal is actively operating an application, the predefined action may be performed based upon the application and a state of the application. *Id.* at page 3, lines 11-12. This application may include, for example, a printing application, a payment application or messaging application; and the states of the application may include, for example, the states of receiving or presenting data. *Id.* at page 10, lines 14-21; page 12, lines 22-25; page 13, lines 22-26; and page 14, line 31 – page 15, line 3. The predefined action may include, for example, reading data from the signaling tag or a device associated with the signaling tag into an actively operating application (see Claims 2, 6, 16, 20, 30, 34) and/or into the terminal (see Claims 3, 5, 17, 19, 31, 33), writing data to the signaling tag or device (see Claims 4, 8, 18, 22, 32, 36), or initiating

communication between the terminal and a device associated with the signaling tag (see Claims 10, 24, 38). *See id.*

**6. *Grounds of Rejection to be Reviewed on Appeal.***

The final Official Action and Advisory Action continue to reject Claims 1, 2, 11, 12, 14-16, 29 and 30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/022961 to Sepanaho. The final Official Action and Advisory Action also continue to reject Claims 4, 18, 25, 26, 32, 39 and 40 under 35 U.S.C. § 103(a) as being unpatentable over Sepanaho in view of either U.S. Patent Application Publication No. 2004/0225199 to Evanyk et al., or U.S. Patent Application Publication No. 2004/0203413 to Harumoto.

**7. *Argument.***

As explained below, Applicants respectfully submit that the claimed invention of the present application is patentably distinct from Sepanaho, Evanyk and Harumoto, taken individually or in combination. In view of the remarks presented herein, Applicants respectfully request reversal of the rejections of the finally rejected pending claims of the present application.

**A. *Claims 1, 2, 11, 12, 14-16, 29 and 30 are Patentable over Sepanaho***

Sepanaho discloses a system and method for displaying information on a portable digital device by transmission of a universal resource locator (URL) over a short-range radio frequency (RF) link. As disclosed, a short-range radio transmitter establishes a link to a portable digital device (user device) within the transmitter's range, and transmits a URL to the device. As the user device receives the transmission, the user device launches software operating thereon, the software itself launching a browser for requesting information from the URL via a different radio frequency link. Accordingly, short-range radio transmitters can be installed in specific locations such that a user device within a definable range can interact with the transmitters to automatically display relevant information associated with that location.

According to one claimed aspect of the present invention, as recited by independent Claim 1, a method of interacting with a signaling tag includes receiving information regarding a signaling tag at a terminal at least partially over an air interface. Thereafter, whether the terminal is actively operating an application is determined. And if the terminal is actively operating an application, a predefined action is performed based upon the application and a state of the application. In this regard, the predefined action can comprise reading data from the signaling tag or a device associated with the signaling tag into an actively operating application (see Claims 2, 6) and/or into the terminal (see Claims 3, 5), writing data to the signaling tag or device (see Claims 4, 8), or initiating communication between the terminal and a device associated with the signaling tag (see Claim 10).

As explained in response to the first Official Action, in contrast to the invention of independent Claim 1, Sepanaho does not teach or suggest determining whether the terminal is actively operating an application, or performing a predefined action based upon the application and the state of the application if the terminal is actively operating an application. Sepanaho does disclose a user device receiving a URL from a short-range radio transmitter and then requesting information from the entity identified by the URL. Instead of determining whether the user device is actively operating an application as in the claimed invention, however, Sepanaho discloses executing a software program for receiving the URL, and for launching a browser to request information from the received URL. The Sepanaho system is configured to perform a series of steps irrespective of a determination of whether the software program or browser is actively operating on the terminal.

In response to the above explanation, the final Official Action took the position that Sepanaho does disclose the aforementioned feature, given the broadest reasonable interpretation of the claimed invention. In this regard, the final Official Action interprets the user device of Sepanaho being powered on in a state of receiving a URL as corresponding to determining whether the terminal is actively operating an application, as recited by the claimed invention. The final Official Action then interprets the user device of Sepanaho executing the URL as corresponding to performing a predefined action based on the application and the state of the application.

In response to the final Official Action, Applicants explained that the claimed invention recites both receiving information over an air interface and determining whether the terminal is actively operating an application. If, as interpreted by the final Official Action, Sepanaho requires satisfaction of a condition (a powered on device in a state of receiving a URL) to receive information (the URL), it would not make sense for Sepanaho to further determine whether the condition is met (determining whether the terminal is actively operating an application), and perform another action if the condition is met. In other words, if Sepanaho requires satisfaction of the aforementioned powered-on condition to receive a URL, then that condition is necessarily also met for also executing the URL, thereby rendering unnecessary any determination of whether the condition is met before executing the URL. Thus, by broadly interpreting the claimed invention as in the final Official Action, the final Official Action improperly reads the recited determining step out of the claims. And as explained in the MPEP, “when evaluating the scope of a claim, every limitation in the claim must be considered.” MPEP § 2106 II.C (emphasis in original).

The Advisory Action now takes the position that Sepanaho determines whether the device is actively operating an application by determining whether the device includes an appropriate software program (e.g., Internet browser) for processing the URL received from the short-range radio transmitter. The Advisory Action explains that paragraph 0002 of Sepanaho discloses that transmission of a URL causes a software program to be executed; and that, in turn, the software program launches an appropriate program (e.g., browser) and passes the URL to the program to load the information at the respective URL. As suggested by the Advisory Action, this sequence of steps includes the device determining whether it is actively operating the application to be launched before performing a predefined action (transmitting the URL).

Contrary to the explanation provided by the Advisory Action, Applicants continue to maintain that Sepanaho does not teach or suggest the claimed invention, including the aforementioned features. First, under no reasonable interpretation does determining whether a device is actively operating an application, as recited by the claimed invention, correspond to determining whether the device includes that application, as attributed to Sepanaho by the Advisory Action. As readily understood by those skilled in the art, for a device to actively

operate an application, that device must not only include the application but must also execute one or more instructions with respect to that application. However, a device need not execute one or more instructions with respect to an application merely because the device includes that application. Accordingly, a device may include an application without actively operating that application.

Second, nowhere does Sepanaho teach or suggest that the device performs a step of determining whether it includes an application for receiving the URL, as alleged by the Advisory Action. In fact, not only does Sephano not disclose determining whether the device includes an appropriate software program, Sephano explicitly discloses that its device does include the respective software programs. *See* Sepanaho, page 2, paragraphs 0018 and 0019 (explaining that “the invention includes ... software which is contained within the user device”; and “the software contained within the user device may ... launch other software programs, on the user device...”). Therefore, it does not make sense that the device would further determine whether the device includes the software programs, as alleged by the Advisory Action, since such a step would be unnecessary.

In view of the foregoing, Applicants respectfully submit that the invention of independent Claim 1, and by dependency Claims 2-14, is patentably distinct from the system and method of Sepanaho. Applicants also respectfully submit that the independent Claims 15 and 29 recite subject matter similar to that of independent Claim 1. In this regard, both independent Claims 15 and 29 recite determining whether the terminal is actively operating an application, and if the terminal is actively operating an application, performing a predefined action based upon the application and the state of the application. Thus, Applicants respectfully submit that independent Claims 15 and 29, and by dependency Claims 16-28 and 30-41, are also patentably distinct from Sepanaho for at least the same reasons given above with respect to independent Claim 1.

***B. Claims 4, 18 and 32 are Patentable over Sepanaho in view of Evanyk***

As indicated above, the final Official Action and Advisory Action reject dependent Claims 4, 18 and 32 as being unpatentable over Sepanaho in view of Evanyk. Similar to

Sepanaho, however, Applicants respectfully submit that Evanyk does not teach or suggest determining whether the terminal is actively operating an application, or performing a predefined action based upon the application and the state of the application if the terminal is actively operating an application, as recited by independent Claims 1, 15 and 29, and by dependency Claims 4, 18 and 32. As neither Sepanaho nor Evanyk individually teach or suggest this feature of the claimed invention, the combination of those publications also does not teach or suggest this feature.

As in response to the first and final Official Actions, Applicants note their inability to locate the quoted passage attributed thereto. In this regard, the first and final Official Actions cite paragraph 20 of Evanyk for disclosing the following: "Software programmable products, for example, cellular telephones and wireless enabled data or computer devices have receiver/transmitter circuitry that could be adapted to read and/or encode RFID's. The present invention may use this circuitry to read and or write to the reconfiguration data on an RF tag, or receive RF data directly into the product's circuitry via an onboard RFID circuit." Paragraph 20 of Evanyk, however, does not include any of this quoted passage. And in fact, after searching the entire disclosure of Evanyk, Applicants are unable to identify any passage corresponding to the above.

Further, Applicants again respectfully submit that, even if Sepanaho and Evanyk did disclose respective features of the claimed invention, one skilled in the art would not have been motivated to modify the Sepanaho system to include the alleged feature of the Evanyk system "to perhaps ask the signaling device for additional information or communicate that the data transmitted from the tag to the user device was faulty and to resend the data," as alleged by the final Official Action. In this regard, as the Sepanaho system is already configured to receive a URL from the radio transmitter, why would Sepanaho require communication back to the transmitter for receiving additional information as opposed to just sending such additional information along with the URL. Also, as the user device receives the URL for the explicit purpose of receiving information from the URL, Applicants question what benefit the Sepanaho system would receive from providing additional information via the radio transmitter, as opposed to providing such information via the URL. Moreover, as to notifying the tag of faulty data, why

would the user device just not establish a link with the radio transmitter to again receive the URL from the radio transmitter, instead of communicating to the radio transmitter that the received URL was faulty to trigger the radio transmitter to again transmit the URL. It would appear that again establishing a link with the radio transmitter could be accomplished by the Sepanaho system alone, while requiring additional communication with the radio transmitter would, as suggested by the Official Action, require adding further logic to the components of the Sepanaho system.

In view of the foregoing, Applicants respectfully submit that the claimed invention of dependent Claims 4, 18 and 32 is patentably distinct from Sepanaho and Evanyk, taken individually or in combination.

***C. Claims 25, 26, 39 and 40 are Patentable over Sepanaho in view of Harumoto***

The final Official Action and Advisory Action reject dependent Claims 25, 26, 39 and 40 as being unpatentable over Sepanaho in view of Harumoto. Similar to Sepanaho and Evanyk, however, Applicants respectfully submit that Harumoto does not teach or suggest determining whether the terminal is actively operating an application, or performing a predefined action based upon the application and the state of the application if the terminal is actively operating an application, as recited by independent Claims 1, 15 and 29, and by dependency Claims 25, 26, 39 and 40. As neither Sepanaho nor Harumoto individually teach or suggest this feature of the claimed invention, the combination of those publications can teach or suggest this feature.

In view of the foregoing, Applicants respectfully submit that the claimed invention of dependent Claims 25, 26, 39 and 40 is patentably distinct from Sepanaho and Harumoto, taken individually or in combination.



8. ***Claims Appendix.***

The claims subject to this appeal are as follows:

1. (Original) A method of interacting with a signaling tag comprising:  
receiving information regarding a signaling tag at a terminal at least partially over an air interface;  
determining whether the terminal is actively operating an application; and if the terminal is actively operating an application,  
performing a predefined action based upon the application and a state of the application.
2. (Original) A method according to Claim 1, wherein performing a predefined action comprises reading data from the signaling tag into an actively operating application when:  
the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data to the terminal;  
the terminal is actively operating an application; and  
the application is in a state of receiving data.
3. (Original) A method according to Claim 1, wherein performing a predefined action comprises reading data from the signaling tag into the terminal when the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data to the terminal and one of:  
the terminal is not actively operating an application; and  
the terminal is actively operating an application in a state other than a state of receiving data.
4. (Original) A method according to Claim 1, wherein performing a predefined action comprises writing data to the signaling tag when:  
the information regarding the signaling tag indicates that the signaling tag is capable of at least receiving data;  
the terminal is actively operating an application; and

the application is in a state of presenting data.

5. (Original) A method according to Claim 1, wherein performing a predefined action comprises reading data from the signaling tag into the terminal when:

the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data and one of:

the terminal is not actively operating an application; and

the terminal is actively operating an application in a state other than a state of one of receiving data and presenting data.

6. (Original) A method according to Claim 1, wherein the signaling tag comprises a transceiver, wherein performing a predefined action comprises reading data from a device associated with the transceiver into an actively operating application when:

the information regarding the signaling tag indicates that the transceiver is capable of at least transmitting data;

the terminal is actively operating an application; and

the application is in a state of receiving data, and wherein reading data from the device comprises reading data from the device in a manner independent of the transceiver.

7. (Original) A method according to Claim 6 further comprising:

receiving at least one connection parameter from the device via the transceiver, wherein reading data from the device comprises reading data from the device based upon the at least one connection parameter and in a manner independent of the transceiver.

8. (Original) A method according to Claim 1, wherein the signaling tag comprises a transceiver, wherein performing a predefined action comprises writing data to a device associated with the transceiver when:

the information regarding the signaling tag indicates that the transceiver is capable of at least receiving data;

the terminal is actively operating an application; and  
the application is in a state of presenting data, and wherein writing data to the device comprises writing data to the device in a manner independent of the transceiver.

9. (Original) A method according to Claim 8 further comprising:  
receiving at least one connection parameter from the device via the transceiver, wherein writing data to the device comprises writing data to the device based upon the at least one connection parameter and in a manner independent of the transceiver.

10. (Original) A method according to Claim 1, wherein the signaling tag comprises a transceiver, wherein performing a predefined action comprises initiating communication between the terminal and a device associated with the transceiver when the information regarding the signaling tag indicates that the transceiver is capable of at least transmitting data and one of:  
the terminal is not actively operating an application; and  
the terminal is actively operating an application in a state other than a state of one of receiving data and presenting data,  
and wherein initiating communication comprises initiating communication between the terminal and the device in a manner independent of the transceiver.

11. (Original) A method according to Claim 1 further comprising:  
selecting a signaling tag before receiving information regarding the signaling tag, wherein the signaling tag comprises a Radio Frequency Identification (RFID) transponder tag.

12. (Original) A method according to Claim 11 further comprising:  
sending an interrogation signal to the RFID transponder tag, wherein receiving information regarding a signaling tag comprises receiving a tag type from the RFID transponder tag in response to the interrogation signal.

13. (Original) A method according to Claim 11 further comprising:

sending at least one interrogation signal to the RFID transponder tag, wherein each interrogation signal is associated with a different tag type;

receiving a response from the RFID transponder tag to one of the at least one interrogation signal that triggers the response; and

identifying a tag type based upon the interrogation signal that triggers the response, wherein receiving information regarding a signaling tag comprises receiving the identified tag type.

14. (Original) A method according to Claim 11, wherein selecting a signaling tag comprises passing the terminal within a predefined distance of a signaling tag.

15. (Original) A terminal for interacting with a signaling tag comprising:  
a controller capable of actively operating an application, wherein the controller is capable of receiving information regarding a signaling tag at least partially over an air interface, wherein the controller is also capable of determining whether the terminal is actively operating an application, and if the controller is actively operating an application, performing a predefined action based upon the application and a state of the application.

16. (Original) A terminal according to Claim 15, wherein the controller is capable of performing a predefined action by reading data from the signaling tag into an actively operating application when:

the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data to the terminal;

the controller is actively operating an application; and

the application is in a state of receiving data.

17. (Original) A terminal according to Claim 15, wherein the controller is capable of performing a predefined action by reading data from the signaling tag into the terminal when the

information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data to the terminal and one of:

- the controller is not actively operating an application; and
- the controller is actively operating an application in a state other than a state of receiving data.

18. (Original) A terminal according to Claim 15, wherein the controller is capable of performing a predefined action by writing data to the signaling tag when:

- the information regarding the signaling tag indicates that the signaling tag is capable of at least receiving data;

- the controller is actively operating an application; and
- the application is in a state of presenting data.

19. (Original) A terminal according to Claim 15, wherein the controller is capable of performing a predefined action by reading data from the signaling tag into the terminal when:

- the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data and one of:

- the controller is not actively operating an application; and
- the controller is actively operating an application in a state other than a state of one of receiving data and presenting data.

20. (Original) A terminal according to Claim 15, wherein the signaling tag comprises a transceiver, wherein the controller is capable of performing a predefined action by reading data from a device associated with the transceiver into an actively operating application when:

- the information regarding the signaling tag indicates that the transceiver is capable of at least transmitting data;

- the controller is actively operating an application; and
- the application is in a state of receiving data, and wherein the controller is capable of reading data from the device in a manner independent of the transceiver.

21. (Original) A terminal according to Claim 20, wherein the controller is capable of receiving at least one connection parameter from the device via the transceiver, and wherein the controller is capable of reading data from the device based upon the at least one connection parameter and in a manner independent of the transceiver.

22. (Original) A terminal according to Claim 15, wherein the signaling tag comprises a transceiver, wherein the controller is capable of performing a predefined action by writing data to a device associated with the transceiver when:

the information regarding the signaling tag indicates that the transceiver is capable of at least receiving data;

the controller is actively operating an application; and

the application is in a state of presenting data, and wherein the controller is capable of writing data to the device in a manner independent of the transceiver.

23. (Original) A terminal according to Claim 22, wherein the controller is capable of receiving at least one connection parameter from the device via the transceiver, and wherein the controller is capable of writing data to the device based upon the at least one connection parameter and in a manner independent of the transceiver.

24. (Original) A terminal according to Claim 15, wherein the signaling tag comprises a transceiver, wherein the controller is capable of performing a predefined action by initiating communication a device associated with the transceiver when the information regarding the transceiver indicates that the transceiver is capable of at least transmitting data and one of:

the controller is not actively operating an application; and

the controller is actively operating an application in a state other than a state of one of receiving data and presenting data,

and wherein the controller is capable of initiating communication with the device in a manner independent of the transceiver.

25. (Original) A terminal according to Claim 15, wherein the controller is further capable of selecting a signaling tag before receiving information regarding the signaling tag, wherein the signaling tag comprises a Radio Frequency Identification (RFID) transponder tag.

26. (Original) A terminal according to Claim 25, wherein the controller is further capable of sending an interrogation signal to the RFID transponder tag, wherein the controller is capable of receiving information regarding a signaling tag comprising a tag type from the RFID transponder tag in response to the interrogation signal.

27. (Original) A terminal according to Claim 25, wherein the controller is capable of sending at least one interrogation signal to the RFID transponder tag, wherein each interrogation signal is associated with a different tag type, wherein the controller is capable of receiving a response from the RFID transponder tag to one of the at least one interrogation signal that triggers the response, and wherein the controller is also capable of identifying a tag type based upon the interrogation signal that triggers the response, wherein the information regarding a signaling tag comprises the identified tag type.

28. (Original) A terminal according to Claim 25 further comprising:  
a transceiver coupled to the controller, wherein the controller is capable of selecting a signaling tag by the transceiver being passed within a predefined distance of a signaling tag.

29. (Original) A computer program product for interacting with a signaling tag, the computer program product comprising a computer-readable storage medium having computer-readable program code portions stored therein, the computer-readable program code portions comprising:

a first executable portion receiving information regarding a signaling tag at a terminal at least partially over an air interface;

a second executable portion for determining whether the terminal is actively operating an application; and if the terminal is actively operating an application,  
a third executable portion for performing a predefined action based upon the application and a state of the application.

30. (Original) A computer program product according to Claim 29, wherein the third executable portion is adapted to perform a predefined action by reading data from the signaling tag into an actively operating application when:

the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data to the terminal;

the terminal is actively operating an application; and

the application is in a state of receiving data.

31. (Original) A computer program product according to Claim 29, wherein the third executable portion is adapted to perform a predefined action by reading data from the signaling tag into the terminal when the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data to the terminal and one of:

the terminal is not actively operating an application; and

the terminal is actively operating an application in a state other than a state of receiving data.

32. (Original) A computer program product according to Claim 29, wherein the third executable portion is adapted to perform a predefined action by writing data to the signaling tag when:

the information regarding the signaling tag indicates that the signaling tag is capable of at least receiving data;

the terminal is actively operating an application; and

the application is in a state of presenting data.



33. (Original) A computer program product according to Claim 32, wherein the third executable portion is adapted to perform a predefined action by reading data from the signaling tag into the terminal when:

the information regarding the signaling tag indicates that the signaling tag is capable of at least transmitting data and one of:

the terminal is not actively operating an application; and

the terminal is actively operating an application in a state other than a state of one of receiving data and presenting data.

34. (Original) A computer program product according to Claim 29, wherein the signaling tag comprises a transceiver, wherein the third executable portion is adapted to perform a predefined action by reading data from a device associated with the transceiver into an actively operating application when:

the information regarding the signaling tag indicates that the transceiver is capable of at least transmitting data;

the terminal is actively operating an application; and

the application is in a state of receiving data, and wherein the third executable portion is adapted to read data from the device in a manner independent of the transceiver.

35. (Original) A computer program product according to Claim 34 further comprising:

a fourth executable portion for receiving at least one connection parameter from the device via the transceiver, wherein the third executable portion is adapted to perform a predefined action by reading data from the device based upon the at least one connection parameter and in a manner independent of the transceiver.

36. (Original) A computer program product according to Claim 29, wherein the signaling tag comprises a transceiver, wherein the third executable portion is adapted to perform a predefined action by writing data to a device associated with the transceiver when:

the information regarding the signaling tag indicates that the transceiver is capable of at least receiving data;

the terminal is actively operating an application; and

the application is in a state of presenting data, and wherein the third executable portion is adapted to write data to the device in a manner independent of the transceiver.

37. (Original) A computer program product according to Claim 36 further comprising:

a fourth executable portion for receiving at least one connection parameter from the device via the transceiver, wherein the third executable portion is adapted to perform a predefined action by writing data to the device based upon the at least one connection parameter and in a manner independent of the transceiver.

38. (Original) A computer program product according to Claim 29, wherein the signaling tag comprises a transceiver, wherein the third executable portion is adapted to perform a predefined action by initiating communication between the terminal and the device associated with the transceiver when the information regarding the signaling tag indicates that the transceiver is capable of at least transmitting data and one of:

the terminal is not actively operating an application; and

the terminal is actively operating an application in a state other than a state of one of receiving data and presenting data,

and wherein the third executable portion is adapted to initiate communication between the terminal and the device in a manner independent of the transceiver.

39. (Original) A computer program product according to Claim 29 further comprising:

a fourth executable portion for selecting a signaling tag before the first executable portion receives information regarding the signaling tag, wherein the signaling tag comprises a Radio Frequency Identification (RFID) transponder tag.

40. (Original) A computer program product according to Claim 39 further comprising:

a fifth executable portion for sending an interrogation signal to the RFID transponder tag, wherein the first executable portion is adapted to receive information regarding a signaling tag comprising a tag type from the RFID transponder tag in response to the interrogation signal.

41. (Original) A computer program product according to Claim 39 further comprising:

a fifth executable portion for sending at least one interrogation signal to the RFID transponder tag, wherein each interrogation signal is associated with a different tag type;

a sixth executable portion for receiving a response from the RFID transponder tag to one of the at least one interrogation signal that triggers the response; and

a seventh executable portion for identifying a tag type based upon the interrogation signal that triggers the response, wherein the first executable portion is adapted to receive information regarding a signaling tag comprising the identified tag type.

9. ***Evidence Appendix.***

None.

10.     ***Related Proceedings Appendix.***  
None.

**CONCLUSION**

For at least the foregoing reasons, Applicants respectfully request that the rejections be reversed.

Respectfully submitted,



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